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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,758	05/01/2001	Alex Liu	EP01-001C	4859
23500	7590	03/03/2005	EXAMINER	
			MORAN, MARJORIE A	
		ART UNIT		PAPER NUMBER
		1631		
DATE MAILED: 03/03/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.	09/846,758	Applicant(s) LIU ET AL.
Examiner Marjorie A. Moran	Art Unit 1631	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) The period for reply expires _____ months from the mailing date of the final rejection.
 b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 07 February 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)); to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) They raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) They raise the issue of new matter (see NOTE below);
 - (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. Applicant's reply has overcome the following rejection(s): _____.
6. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. For purposes of appeal, the proposed amendment(s): a) will not be entered, or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-11 and 15-25.

Claim(s) withdrawn from consideration: 12-14.

AFFIDAVIT OR OTHER EVIDENCE

8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

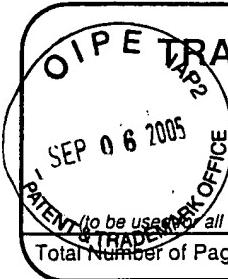
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. Other: _____

*Marjorie A. Moran
Primary Examiner
Art Unit: 1631*
3/2/05
DOCKETED
Exelixis, Inc.

Continuation of box 11, above: the prior art of NEFF et al. (US 6,534,313) teaches an insertional mutagen capable of both gain- and loss-of-function mutations (col. 16, lines 2-28), wherein either mutation is dominant. As NEFF was applied, in various combinations, in rejections under 35 USC 103 against all of claims 1-11 and 15-25 in the final office action of 8/6/04, the examiner maintains that the prior art of record teaches all of the claimed limitations, and the amended claims remain rejected. In response to the rejection that JOHNSON "teaches away" from BRIGGS, it is noted that JOHNSON teaches that his genetic marker is inherited in a dominant manner (col. 8, lines 19-23), NOT that his marker is either gain- or loss-of-function. BRIGGS teaches in the background of his invention that insertional mutagenesis for causing gain-of-function was known (col. 2, lines 38-44). As NEFF teaches that either a gain-of-function or a loss-of-function mutation caused by insertional mutagenesis may be a dominant mutation, the examiner maintains that one skilled in the art would reasonably have expected success in combining the teachings of BRIGGS with JOHNSON, therefore applicant's arguments are not persuasive

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TRANSMITTAL
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	09/846,758
Filing Date	May 1, 2001
First Named Inventor	Alex Liu
Art Unit	1631
Examiner Name	Moran
Attorney Docket Number	EP01-001C

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD.	<input type="checkbox"/> After Allowance Communication to TC <input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
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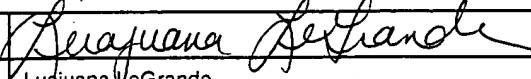
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm	Exelixis, Inc.		
Signature			
Printed Name	Terri L. Sale		
Date	February 7, 2005	Reg. No.	45,066

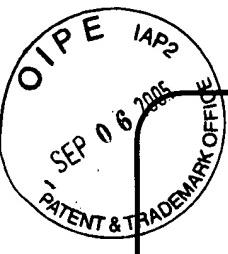
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Signature	
Typed or printed name	Luajuana LeGrande
Date	February 7, 2005

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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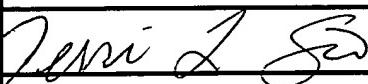
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Total Number of Pages in This Submission	28	Attorney Docket Number	EP01-001C
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ENCLOSURES (check all that apply)

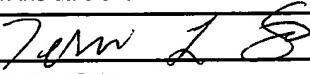
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input checked="" type="checkbox"/> Amendment / Reply <input checked="" type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Request for RCE Submission with amendment Copy of advisory action Return Receipt Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

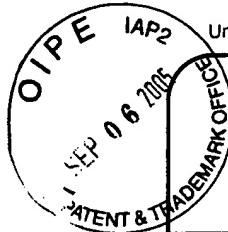
Firm	Exelixis, Inc.		
Signature			
Printed Name	Terri L. Sale		
Date	September 6, 2005	Reg. No.	45,066

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Typed or printed name	Terri L. Sale
Date	September 6, 2005

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FEE TRANSMITTAL for FY 2005

Effective 10/01/2004. Patent fees are subject to annual revision.

 Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ 2870)

Complete if Known

Application Number	09/846,758
Filing Date	May 1, 2001
First Named Inventor	Alex Liu
Examiner Name	Marjorie A. Moran
Art Unit	1631
Attorney Docket No.	EP01-001C

METHOD OF PAYMENT (check all that apply)

 Check Credit card Money Other None
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Deposit Account Name	50-1108

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FEE CALCULATION

1. BASIC FILING FEE

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
1001 790	2001 395	Utility filing fee	
1002 350	2002 175	Design filing fee	
1003 550	2003 275	Plant filing fee	
1004 790	2004 395	Reissue filing fee	
1005 160	2005 80	Provisional filing fee	
SUBTOTAL (1)		(\$ 0)	

2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Independent Claims	Multiple Dependent	Extra Claims	Fee from below	Fee Paid
			-20 **	= 0 X 0 = 0	
			-3 **	= 0 X 0 = 0	
				X 0 = 0	

Large Entity	Small Entity	Fee Description
Fee Code (\$)	Fee Code (\$)	
1202 18	2202 9	Claims in excess of 20
1201 88	2201 44	Independent claims in excess of 3
1203 300	2203 150	Multiple dependent claim, if not paid
1204 88	2204 44	** Reissue independent claims over original patent
1205 18	2205 9	** Reissue claims in excess of 20 and over original patent
SUBTOTAL (2)		(\$ 0)

**or number previously paid, if greater; For Reissues, see above

3. ADDITIONAL FEES

Large Entity	Small Entity	Fee Description	Fee Paid
Fee Code (\$)	Fee Code (\$)		
1051 130	2051 65	Surcharge - late filing fee or oath	
1052 50	2052 25	Surcharge - late provisional filing fee or cover sheet	
1053 130	1053 130	Non-English specification	
1812 2,520	1812 2,520	For filing a request for ex parte reexamination	
1804 920*	1804 920*	Requesting publication of SIR prior to Examiner action	
1805 1,840*	1805 1,840*	Requesting publication of SIR after Examiner action	
1251 110	2251 55	Extension for reply within first month	
1252 430	2252 215	Extension for reply within second month	
1253 980	2253 490	Extension for reply within third month	
1254 1,530	2254 765	Extension for reply within fourth month	
1255 2,080	2255 1,040	Extension for reply within fifth month	2080
1401 340	2401 170	Notice of Appeal	
1402 340	2402 170	Filing a brief in support of an appeal	
1403 300	2403 150	Request for oral hearing	
1451 1,510	1451 1,510	Petition to institute a public use proceeding	
1452 110	2452 55	Petition to revive – unavoidable	
1453 1,370	2453 685	Petition to revive – unintentional	
1501 1,370	2501 685	Utility issue fee (or reissue)	
1502 490	2502 245	Design issue fee	
1503 660	2503 330	Plant issue fee	
1460 130	1460 130	Petitions to the Commissioner	
1807 50	1807 50	Processing fee under 37 CFR 1.17 (q)	
1806 180	1806 180	Submission of Information Disclosure Stmt	
8021 40	8021 40	Recording each patent assignment per property (times number of properties)	
1809 790	2809 395	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810 790	2810 395	For each additional invention to be examined (37 CFR § 1.129(b))	
1801 790	2801 395	Request for Continued Examination (RCE)	790
1802 900	1802 900	Request for expedited examination of a design application	
Other fee (specify) _____			

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ 2870)

SUBMITTED BY

Complete (if applicable)

Name (Print/Type)	Terri L.Sale	Registration No. (Attorney/Agent)	45,066	Telephone	650 837-7460
Signature			Date	September 6, 2005	

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Express Mail No. ED 711661202 US First Class Mail ()
Date Mailed 7 Feb 2005 Inventor/Applicant Alex Liu, et al
Serial No. 09/1846,758 Confirmation No. _____ Filing Date 1 May 2001
Title System for Functional Gene Discovery in Plants

Amendment/Response 8
w/ exhibits _____ pgs.
 Appeal, Notice of _____
 Application:
 Specification _____ pgs.
 Claims, _____ pgs.
() Drawings: _____ Figures _____ Sheets
() Declaration Of Inventorship _____ pgs.
() Executed () Unexecuted () Copy
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() IDS/Form 1449 _____ pgs.
() w/refs. _____ pgs. () w/o refs.
() Issue Fee Transmittal _____ pgs.
 Petition to Extend Time 1 pgs. (1 copy)
() Power of Attorney _____ pgs.
() PCT-EASY Request _____ pgs.
() PCT-EASY diskette
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 () CRF: _____ () Paper _____ pgs.
() Statement verifying above copies _____ pgs.
 Transmittal Letter 1 pgs.

Other: Notice of Appeal 1 p + 1 copy

File No.: EPO1-001C Sender: RL

Express Mail No. ED 711661202 US First Class Mail ()
Date Mailed 7 Feb 2005 Inventor/Applicant Alex Liu, et al
Serial No. 09/1846,758 Confirmation No. _____ Filing Date 1 May 2001
Title System for Functional Gene Discovery in Plants

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() IDS/Form 1449 _____ pgs.
() w/refs. _____ pgs. () w/o refs.
() Issue Fee Transmittal _____ pgs.
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() Sequence Submission:
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